

REMARKS

This Application has been carefully reviewed in light of the Final Action mailed July 19, 2005. In order to advance prosecution of the present Application, Claims 1, 9, 10, 16-18, 20, and 23 have been amended. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1, 2, 4, 5, 7-11, and 13-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. Independent Claims 1, 10, and 17 recite in general the ability to send a third message over a reverse notification path, from a second switch to a first switch, in response to the second switch receiving traffic flow from the first switch over the working path in order to control protection switching by the first switch, wherein the third message indicates whether traffic flow sent on the working path was received intact and on time by the second switch. By contrast, the Cao, et al. application performs protection switching at its downstream egress router by transmitting the same data along two different paths and allowing the downstream egress router to choose one of the paths as its primary source. Moreover, the Examiner readily admits that the Cao, et al. application does not disclose the sending of the second and third messages of the claimed invention.

To support the deficiency in the Cao, et al. application, the Examiner cites the keep-alive polling process of the McAllister, et al. patent. However, the McAllister, et al. patent requires the constant sending of keep-alive protocol signaling messages and the return of acknowledgment signaling messages independent of the transfer of traffic flow over a working path in a network. The protocol and acknowledgment

signaling messages, whether in the form of sequenced protocol message units or separately sequenced poll and stat messages, of the McAllister, et al. patent are not used to establish working or protection paths or a reverse notification path in its network, but merely to determine whether a first node receives a signaling message from a second node to which it can return an acknowledgment signaling message indicating that it is still operational. Moreover, the protocol and acknowledgment signaling messages are sent on direct node to node signaling paths separate from the data path in the network. The McAllister, et al. patent has no capability at any of its nodes to determine whether data on its data path was received intact and on time let alone an ability to provide such an indication in a message along a reverse notification path as provided in the claimed invention. Any problems occurring in the data path of the McAllister, et al. patent would not be recognized as long as the protocol and acknowledgment messages are sent and received in a proper manner. Accordingly, the protocol and acknowledgment signaling messages have no relationship with the traffic flow in the network of the McAllister, et al. patent. Thus, the McAllister, et al. patent does not send a third message from a second switch to a first switch in response to traffic flow being received at the second switch from the first switch over a working path that indicates whether traffic flow was received intact and on time as required by the claimed invention.

Moreover, the Cao, et al. application would not be able to use the acknowledgment messages generated by the McAllister, et al. patent as the Cao, et al. application would still perform protection switching at a downstream router by selecting one of two paths carrying the same data. The

structure that would result from using the protocol and acknowledgment signaling messages transmitted along a signaling path independent of the data path as disclosed in the McAllister, et al. patent within the MPLS data network of the Cao, et al. application that implements an egress router for selection of one of two data paths carrying the same data would still lack sending of a third message, indicating whether traffic flow was received intact and on time, by a second switch in response to receiving traffic flow from a first switch so that the first switch can control protection switching as required in the claimed invention. Therefore, Applicant respectfully submits that Claims 1, 2, 4, 5, 7-11, and 13-24 are patentably distinct from the proposed Cao, et al. - McAllister, et al. combination.

Claims 3 and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. and further in view of Aukia, et al. Independent Claim 1, from which Claim 3 depends, and Independent Claim 10, from which Claim 12 depends, have been shown above to be patentably distinct from the proposed Cao, et al. - McAllister, et al. combination. Moreover, the Aukia, et al. patent does not include any additional disclosure combinable with either the Cao, et al. application or the McAllister, et al. patent that would be material to patentability of this claim. Therefore, Applicant respectfully submits that Claims 3 and 12 are patentably distinct from the proposed Cao, et al. - McAllister, et al. - Aukia, et al. combination.

Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Cao, et al. in view of McAllister, et al. and further in view of Lemieux. Independent Claim 1, from which Claim 6 depends, has been shown above to be patentably distinct from the proposed Cao, et al. - McAllister, et al.

combination. Moreover, the Lemieux patent does not include any additional disclosure combinable with either the Cao, et al. application or the McAllister, et al. patent that would be material to patentability of this claim. Therefore, Applicant respectfully submits that Claims 3 and 12 are patentably distinct from the proposed Cao, et al. - McAllister, et al. - Lemieux combination.

This Response to Examiner's Final Action is necessary to address the Examiner's characterization of the cited art in support of the claim rejections. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now provided an updated characterization of the cited art.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicants

A handwritten signature in black ink, appearing to read "Charles S. Fish", is written over the printed name.

Charles S. Fish

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